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**MAILED**  
**APR 28 2011**  
**OFFICE OF PETITIONS**

In re Application of Aastrup et al. :  
Application No. 10/542,616 : Decision on Petition  
Filing Date: July 18, 2005 :  
Attorney Docket No. 066935-076983 :

This is a decision on the petition to revive the above-identified application under 37 CFR 1.137(b) filed February 25, 2011.

The petition is **granted**.

The Office mailed a Notification of Non-Compliant Appeal Brief on March 2, 2010. The notification set an extendable time period of the longer of one month or thirty days. The Office did not receive a response to the notification or a request for an extension of time. As a result, the appeal was dismissed. Since no claim was allowed, the application became abandoned on April 3, 2010.

The instant petition requests revival of the application.

A grantable petition under 37 CFR 1.137(b) must be accompanied by:

- (1) The reply required to the outstanding Office action or notice, unless previously filed,
- (2) The petition fee,
- (3) A statement that the entire delay in filing the required reply from the due date for the reply until the filing of a grantable petition pursuant to 37 CFR 1.137(b) was unintentional, and
- (4) A terminal disclaimer and fee if the application was filed on or before June 8, 1995, or if the application is a design application.

The petition satisfies the requirements of 37 CFR 1.137(b) in so far as petitioner has supplied a reply in the form of a new appeal brief, the required petition fee of \$810, and the required statement of unintentional delay. Therefore, the petition is granted and the application is revived.

Applicants should note the instant decision should not be interpreted as an indication the Office has determined the appeal brief filed with the instant petition complies with the provisions of 37 CFR 41.37. In other words, the instant decision does not preclude the future issuance of a Notification of Non-Compliant Appeal Brief setting a new time period for reply if the Office subsequently determines the appeal brief filed with the instant petition does not comply with the provisions of 37 CFR 41.37.

The petition is signed by Attorney Jeffrey Oster. The record fails to indicate Attorney Oster has been given a power of attorney to prosecute the application and the address on the petition differs from the address of record. A courtesy copy of this decision is being mailed to the address given on the petition. However, if Attorney Oster wishes to receive future correspondence at the address on the petition, a request to change the address of record must be filed.

MPEP 1205.03 states,

Effective March 30, 2010, the Board of Patent Appeals and Interferences (BPAI) will have the sole responsibility for determining whether appeal briefs filed in patent applications comply with 37 CFR 41.37, and will complete the determination before the appeal brief is forwarded to the examiner for consideration.

In view of MPEP 1205.03, the Board of Patent Appeals and Interferences will be informed of the instant decision and will review the February 25, 2011 appeal brief in due course.

Telephone inquiries regarding this communication should be directed to Petitions Attorney Steven Brantley at (571) 272-3203.



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